

CHIEF INFORMATION OFFICER, OFFICE OF THE[129]

Notice of Intended Action

**Proposing rule making related to the broadband grants program
and providing an opportunity for public comment**

The Office of the Chief Information Officer hereby proposes to adopt new Chapter 22, “Broadband Grants Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 8B.4(5) and 8B.11(8).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 8B.11.

Purpose and Summary

New Chapter 22 applies to the Broadband Grants Program established by Iowa Code section 8B.11 and administered by the Office. As authorized by Iowa Code section 8B.11(8), this proposed chapter establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the Broadband Grants Program, the key objective of which is to reduce or eliminate underserved areas (statutorily referred to as targeted service areas) in Iowa by incentivizing the installation of broadband infrastructure by communications service providers therein.

Fiscal Impact

The Office will use the existing budget and resources to implement these rules, including any specific appropriations made during the 2018 Legislative Session for such purpose.

Jobs Impact

Deployment of grant funds should lead to increased broadband projects for communications service providers and therefore increased job opportunities across the state.

Waivers

These rules establish general processes and procedures applicable to the posting of opportunities related to and applications for grant funds. Specific requirements, however, will be more fully articulated in the Notice of Funding Availability, as stated in these rules. Waivers will be handled in accordance with the terms of the Notice of Funding Availability—similar to the manner in which waivers for requests for proposals in the procurement context are handled.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Office no later than 4:30 p.m. on May 1, 2018. Comments should be directed to:

Robert S. von Wolfradt
Office of the Chief Information Officer
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa 50319
Email: CIO@iowa.gov

Public Hearing

If timely requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

May 2, 2018
10 to 11 a.m.

OCIO Innovation Lab
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Office and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 129—Chapter 22:

CHAPTER 22 BROADBAND GRANTS PROGRAM

129—22.1(8B) Definitions. The definitions in rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall also apply:

“*Grantee*” means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

“*Project*” means an installation of broadband infrastructure by a communications service provider in one or more targeted service areas. Except in limited circumstances otherwise permitted herein, a project may not be comprised of, in whole or in part, census blocks that are not targeted service areas.

129—22.2(8B) Purpose and scope. This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. As authorized by Iowa Code section 8B.11(8), this chapter establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate targeted service areas in the state of Iowa by incentivizing the installation of broadband infrastructure by communications service providers therein.

129—22.3(8B) Notice accepting grant funds.

22.3(1) The office shall provide notice to communications service providers when grant funds become available for distribution by the office by posting a “Notice of Funding Availability” (NOFA) online at iowagrants.gov and ocio.iowa.gov/broadband.

22.3(2) Such NOFA may:

- a. Generally describe the application process.
- b. State the date, time, and manner by which applications for such grant funds must be submitted to the office in order to be eligible for consideration by the office for an award of grant funds.
- c. State the total amount of grant funds available for distribution under the applicable NOFA.
- d. Describe the factors the office will consider in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- e. Set forth any measurement, technical, scoring, or other similar standards, formulas or criteria the office will utilize in applying any factors considered by the office in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- f. State any other terms, conditions, requirements, or processes applicable to communications service providers submitting applications for grant funds, including but not limited to any grant agreement the office may require a grantee to enter into as a condition of receiving grant funds pursuant to subrule 22.6(1).

129—22.4(8B) Applications for grant funds.

22.4(1) *Application process.* Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure in targeted service areas at or above 25 megabits per second of download speed and 3 megabits per second of upload speed. Applications shall be made and submitted in accordance with the terms of the NOFA.

22.4(2) *Contents of application.* In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

- a. The communications service provider’s legal and business name and address;
- b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;
- c. The census block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will occur);
- d. Attestation that the broadband infrastructure installed in the targeted service area(s) will facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

22.4(3) *Deadlines.* The office will only consider applications received on or before the applicable deadline as stated in the NOFA, unless the office, in its sole discretion, establishes a different deadline for the submission of applications. The office may establish a different deadline for all applicants, but will not change the deadline for or at the request of any individual applicant.

22.4(4) *Applications—public records.* Pursuant to Iowa Code section 8B.11(3), the office is required to post applications to a public Internet site. Accordingly, and consistent with Iowa Code chapter 22, except in narrowly defined circumstances as stated in the NOFA, in accordance with the terms and conditions stated therein, and solely to the extent permitted by applicable law, the office will treat all applications submitted by communications service providers and their contents as public, nonconfidential records/information and make them generally available for public inspection at ocio.iowa.gov/broadband.

22.4(5) *Limited exception for broadband infrastructure installed outside of targeted service areas.* These rules generally limit the use of grant funds to and for broadband infrastructure installed within targeted service areas. This requirement is designed to ensure that the use of grant funds has the greatest possible impact on eliminating targeted service areas and to ensure the office’s effective, efficient, and responsible management/oversight of the program. Notwithstanding, the office may, on

a limited basis and in the office's sole discretion, permit communications service providers to apply for and utilize grant funds for broadband infrastructure installed outside of targeted service areas that is essential to and inextricably intertwined with facilitating broadband infrastructure within targeted service areas forming the basis of a project; provided that a communications service provider applying for any such exception shall be required to clearly demonstrate to the office's sole satisfaction:

a. Why reimbursement for such broadband infrastructure deployed outside of a targeted service area is essential to and inextricably intertwined with facilitating broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area(s) forming the basis of a project and cannot otherwise be excluded from the application; and

b. The specific methods/formulas the communications service provider will utilize in proportionally allocating the costs of and for such broadband infrastructure to targeted service area(s) forming the basis of the project to which broadband service is facilitated by such infrastructure.

129—22.5(8B) Application review process and award of grant funds.

22.5(1) *Optional period for public comment.* Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office may, in its sole discretion, open a period for public comment as it relates to such applications through the state of Iowa's public comment website: comment.iowa.gov. If the office elects to solicit public comment pursuant to this rule, any member of the public will be permitted to submit comments regarding applications received by the office.

22.5(2) *Review committee.* Following the expiration of the deadline for the receipt of applications stated in the NOFA, the office will supply all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, to a review committee established by the office comprised of representatives selected by the office from schools, communities, agriculture, industry, and other areas. The review committee will review the applications and provide input/make recommendations to the office regarding whether, to which projects, and in what amount(s) to award grant funds, in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B.

22.5(3) *Office final decision.* Following the office's receipt of the review committee's input or recommendations and the closure of the period for public comment, if any, the office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, the input/recommendations made by the review committee, and any public comment solicited/received, all in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B, and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds.

a. In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA:

(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds. Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427).

(2) The percentage of the homes, schools, and businesses in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as a result of the project.

(3) The geographic diversity of the project areas of all applicants.

(4) The economic impact the project will have on the area.

(5) The applicant's total proposed budget for the project, including the amount or percentage of local match, if any.

(6) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not:

(1) Base its decision on the office's prior knowledge of any applicant except for the information provided in the application; or

(2) Make an award that exceeds 15 percent of any communications service provider's total estimated allowable project costs for a proposed installation of broadband infrastructure.

22.5(4) Notice to applicants of decision and right to appeal. The office shall notify each communications service provider awarded a grant by the office of the office's decision(s) in accordance with the terms and conditions of the NOFA. The office will also post such decision(s) online at iowagrants.gov and ocio.iowa.gov/broadband. Unsuccessful applicants are solely responsible for reviewing such websites to determine their award status. Such agency decision(s) shall become final unless, within ten days of such email transmission or posting, an applicant which was adversely affected by a decision of the office files a request for a contested case proceeding pursuant to 129—Chapter 6. Failure to challenge the office's decision under this rule by filing a request for a contested case within the ten-day period shall waive any claims an applicant may have related to the office's administration of the process and otherwise be deemed a failure to exhaust administrative remedies.

129—22.6(8B) Administration of award.

22.6(1) Grant agreement required. The office may require a grantee to enter into a grant agreement with the office in accordance with the terms, conditions, and requirements of the NOFA. Such grant agreement may include, but not be limited to, the total amount of the grant funds awarded to the grantee; a description of the project to be completed by the grantee and specifications related thereto; a description of allowable expenditures; conditions related to the disbursement of grant funds; default and termination procedures; performance, certification, and verification requirements/criteria necessary to confirm project success/completion; and repayment requirements in the event the grantee does not fulfill its obligations under the agreement, these rules, or Iowa Code chapter 8B. In addition to any terms, conditions, or requirements specifically set forth in such agreement, any and all requirements established by Iowa Code chapter 8B, these rules, other applicable law, rule, or regulation, or the NOFA shall be deemed incorporated by reference into such grant agreement as if fully set forth therein.

22.6(2) Mapping data required. Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form deemed acceptable to the office demonstrating specifically where a completed project for which grant funds have been utilized traverses. As it relates to aspects of installations delivered over wireline, such GIS data must enable the office to determine which specific homes, schools, and businesses within each targeted service area forming the basis of the project have access to broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as a result of the project.

22.6(3) Reimbursements, record keeping/audits, performance/certification, and repayment. In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

a. Reimbursement.

(1) General. A grantee shall only be reimbursed by the office for:

1. Allowable and not disallowed expenditures actually and previously incurred by the grantee. What constitutes allowable or disallowable expenditures shall be further specified in the NOFA or grant agreement.

2. Expenditures for broadband infrastructure installed in targeted service areas; or, in the limited circumstances permitted herein, to the extent any expenditures relate to broadband infrastructure installed outside of targeted service areas but which facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed within targeted service areas underlying the application, only for the proportionate amount that such broadband infrastructure facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed within targeted service areas; and

3. Expenditures for which the grantee is able to supply sufficient and appropriate documentation. What constitutes sufficient or appropriate documentation shall be further specified in the NOFA or grant agreement.

(2) Timing. Requests for reimbursement may be submitted to the office in accordance with the terms and conditions in the NOFA or grant agreement.

b. Performance/certification. After the completion of a project utilizing, in whole or in part, grant funds, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation was installed in or otherwise facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in each of the applicable targeted service areas identified in the original application, and identify the total number of homes, schools, and businesses actually receiving broadband service in each targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

c. Field testing. The office may, in its discretion, conduct field tests for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) at any time after broadband service is certified as complete in accordance with paragraph 22.6(3)“b” and prior to reimbursing a grantee for any claimed, allowable expenditures. Such field tests may include but not be limited to speed tests from any location in a targeted service area or census block in which the project was to be deployed or, in the case of wireline installations, the grantee’s network operation center or central office.

d. Disbursement/repayments.

(1) A grantee shall not be entitled to the applicable portion of any grant funds or shall be obligated to repay the office the applicable portion of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds 15 percent of the grantee’s estimated or final total allowable project costs, whichever is less.

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area identified in the original application;

2. A grantee fails to complete the project as proposed in the original application; or

3. Any representation or warranty made by a grantee in an application for grant funds, a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

e. Notice of default. If the office determines a grantee is not entitled to or is otherwise required to repay the office in accordance with paragraph 22.6(3)“d,” the office may issue the grantee a “Notice of Default,” which shall afford the grantee 30 days to cure the default. Whether a grantee has sufficiently cured the default shall be determined in the sole discretion of the office. If a grantee fails to cure the default within 30 days, the office may issue an order requiring the grantee to reimburse the office for the amount specified in the “Notice of Default.”

22.6(4) Remedies for noncompliance. In addition to issuing a “Notice of Default” and subsequent order requiring the grantee to reimburse the office for failing to cure the default pursuant to paragraph

22.6(3) “e” and any other remedies available to the office pursuant to a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), the office may, for cause, find that a grantee is not in compliance with the requirements of Iowa Code section 8B.11, these rules, or a grant agreement entered into by the office and a grantee pursuant to subrule 22.6(1).

a. At the office’s sole discretion, remedies for noncompliance may include, but are not limited to, the following:

(1) Issuing a warning letter stating that further failure to comply with program requirements within a stated period of time will result in a more serious action.

(2) Conditioning a future grant on compliance with program requirements within a stated period of time.

(3) Disallowing future reimbursements.

(4) Requiring that some or all previously issued grant funds be reimbursed to the office.

b. Reasons for a finding of noncompliance include, but are not limited to, one or more of the following:

(1) A violation of any of the terms or conditions of a grant agreement entered into between the office and a grantee pursuant to subrule 22.6(1);

(2) A grantee’s failure to complete a project in a timely manner;

(3) A grantee’s failure to comply with any applicable state laws, rules, or regulations;

(4) Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

(5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or that does not facilitate broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed in a targeted service area identified in the original application;

(6) A grantee fails to complete the project as proposed in the original application;

(7) The total claimed expenditures or the amount previously reimbursed by the office exceeds 15 percent of the grantee’s estimated or final total allowable project costs, whichever is less;

(8) Any representation or warranty made by a grantee in an application for grant funds, an agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

22.6(5) Office’s decision and right to appeal.

a. Any decision of the office entitled “proposed decision,” “final decision,” or other like caption as relating to any issues described in subparagraphs (1) through (5) below shall become final unless, within 30 days of the transmission of such decision by the office by email to the email address of the individual identified in paragraph 22.4(2) “b” or to the email address of a person otherwise identified by the grantee in writing prior to the issuance of such decision as the person authorized by the grantee to respond to inquiries regarding the administration of the grant, a grantee which is adversely affected by the decision files a request for a contested case proceeding pursuant to 129—Chapter 6.

(1) The interpretation, construction, or application of any terms or conditions or resolution of a dispute under a grant agreement entered into between the office and a grantee or under these rules;

(2) Whether or in what amount a grantee is entitled to reimbursement pursuant to a grant agreement entered into between the office and a grantee, or under these rules;

(3) Whether or in what amount a grantee must repay the office pursuant to a grant agreement entered into between the office and a grantee or under these rules;

(4) The imposition of any remedies for noncompliance in accordance with subrule 22.6(4); or

(5) Any other decision of the office as it relates to the administration of a grant awarded pursuant to Iowa Code section 8B.11, these rules, or a grant agreement entered into between the office and a grantee.

b. Failure to challenge the office's decision under this rule by filing a request for a contested case within the 30-day period shall waive any claims an applicant may have related to the administration of a grant award and otherwise be deemed a failure to exhaust administrative remedies.

129—22.7(8B) Reallocation of grant funds. To the extent permitted by applicable law, if grant funds the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees, open additional rounds of applications, or revert the moneys to the general fund. If the office awards additional grant funds to other grantees, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract amendments with the office providing for the expenditure of the additional grant funds, and will otherwise be subject to Iowa Code section 8B.11 and these rules.

These rules are intended to implement Iowa Code section 8B.11.